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<b>L.D., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 15-0706</b>
	)	<b>Issued: May 9, 2016</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>MALCOLM RANDALL VETERANS</b>	)	
<b>ADMINISTRATION MEDICAL CENTER,</b>	)	
<b>Gainesville, FL, Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On February 12, 2015 appellant filed a timely appeal from a January 15, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

The issue is whether appellant met her burden of proof to establish an emotional condition in the performance of duty causally related to factors of her federal employment.

<sup>2</sup> Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated August 14, 2015, the Board denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 15-0706 (issued August 14, 2015). The Board's *Rules of Procedure* provide that any appeal in which a request for oral argument is not granted by the Board will proceed to a decision based on the case record and any pleadings submitted. 20 C.F.R. § 501.5(b).

On appeal appellant asserts that her claim should be accepted because she worked in a hostile environment and has been diagnosed with post-traumatic stress disorder (PTSD).

### **FACTUAL HISTORY**

On December 9, 2013 appellant, then a 57-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she had been subjected to verbal abuse and threatening behavior by her supervisor, the union president, and a colleague over the past four months.<sup>3</sup>

In letters dated December 18, 2013, OWCP informed appellant of the evidence needed to support her claim and asked the employing establishment to respond to appellant's allegations.

In a lengthy response, appellant alleged that she was being mistreated by management, including that her supervisor, a social worker, and a clinical coordinator of mental health intensive care management (MHICM) criticized her time management skills, embarrassed her in front of coworkers, gave her instructions on how to carry out her work without input, gave social workers preferential treatment, and generally harassed and mistreated her. She also alleged that another nurse had a critical spirit and was aggressive, rude, and disrespectful upon her arrival at the employing establishment, had continually treated her in a harsh manner, and had given her no support. Appellant asserted that other coworkers created a hostile environment by shunning her, being "gossip-mongers," and bullying her. She maintained that she was not given appropriate policies or procedures, not given a chance to attend new employee orientation, and that she disagreed with the assignment of work and work policies at the employing establishment. Appellant described computer problems, alleging that when her printer broke, she was told to contact information resources management (IRM) who told her she would have to get approval for a new one, which was given. She also maintained that she was overwhelmed by working with five clients, but on numerous times had requested more clients. Appellant provided a diary dated November 7 to December 23, 2013. She related that on November 7, 2013 she visited the union to try and set up a meeting with her supervisor and the "bully" nurse, but the union officer was rude to her when the meeting was scheduled for November 8, 2013. Appellant cancelled the meeting because she was so upset. She then notified her supervisor that she was taking time off. Appellant related that she was hospitalized for PTSD from November 18 to 24, 2013 and described problems thereafter dealing with Family and Medical Leave Act (FMLA) requests, her FECA claim, getting paid properly, and scheduling meetings.

Appellant attached e-mail correspondence from October 30 to November 26, 2013 regarding leave problems and filing of her FECA claim. In treatment reports dated August 7 to November 13, 2013, Dr. Lalita Ramnaraine, a resident physician in psychiatry, reported a history of appellant being hospitalized in February 2013 for depression with suicidal ideation following problems at work. She diagnosed major depressive disorder, PTSD, personality disorder, and psychosocial stress. On November 13, 2013 Dr. Ramnaraine reported that appellant was being bullied at work and had problems with the union which caused depression and suicidal thoughts. She completed an FMLA certification indicating that appellant was unable to work due to

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<sup>3</sup> The record indicates that appellant had two prior claims: an accepted May 27, 2011 traumatic injury adjudicated by OWCP under file number xxxxxx468, and a denied emotional condition claim, adjudicated by OWCP under file number xxxxxx619. These other claims are not presently before the Board.

worsening PTSD. On December 16, 2013 Dr. Ramnaraine reported that appellant could return to full-duty work with no restrictions on January 6, 2014.<sup>4</sup>

In a February 13, 2014 statement, appellant's supervisor related that appellant began work at the employing establishment in July 2013. Appellant had 12 weeks of training, had difficulties with the MHICM team, went on FMLA leave on November 8, 2013, and returned to work on January 6, 2014. Her supervisor stated that appellant had reported prior problems with bullying at the previous location as well as things going on in her personal life which caused emotional distress. She advised that after appellant returned in January 2014, her caseload was 5 veterans, whereas the usual caseload was 12 to 15 veterans. Her supervisor maintained that she treated appellant with respect and courtesy and had not observed any staff behaving in an abusive manner. She noted that she first heard that appellant felt she was being abused and working in a hostile environment when she was contacted by the union on November 7, 2013, and that a meeting was scheduled on November 8, 2013, but the meeting was cancelled by appellant. Her supervisor attached a response to each of appellant's allegations. She described the MHICM team, opining that it needed to work together. The supervisor noted that appellant was provided a copy of her functional statement twice, and this was also available online. When appellant was hired, she was placed on a waiting list for new employee training, and when it became available, she was on FMLA leave, but that she had attended it since returning to work in January. The supervisor noted that when appellant reported a computer problem, she informed appellant that the proper procedure was to contact IRM and put in a work order. She indicated that she offered appellant another computer and assisted her in getting paperwork for a new computer. The supervisor advised that appellant did not like to be questioned by others on the team regarding her treatment suggestions and reported that she, as clinical coordinator, had the responsibility for daily assignments. She further related that appellant had difficulty with attending a required yoga group and in attending rounds and continued to question policies regarding injections, transportation, and pharmacy. Her supervisor reported that she had never observed any inappropriate behavior by the nurse identified by appellant or other team members, and concluded by stating that she did not agree with appellant's allegations.

In a June 12, 2014 decision OWCP reviewed each of appellant's allegations and denied her claim, finding that as she had not established a compensable factor of employment, she did not develop an emotional condition in the performance of duty.

Appellant timely requested a hearing that was held before an OWCP hearing representative on October 29, 2014. She testified at the hearing that she transferred from another employing establishment location in Gainesville on July 13, 2013. Appellant indicated that she left Orlando following a settlement and after three weeks in the new location, she began having problems with her supervisor and a nurse and with her union's representative. She stated it all came to a head on November 7, 2013 when she had a confrontation with the representative about union representation and had to call VA police. Appellant stated that later she was in the field and received a call from her supervisor who was furious because she had gone to the union complaining of a hostile work environment. She testified that she then had to be hospitalized

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<sup>4</sup> The record also contains medical reports predating her employment with the employing establishment including emergency room records from October 15, 2012 and January 27, 2013, and an April 9, 2013 report in which Dr. Eneida Gomez, a Board-certified psychiatrist, advised that she began treating appellant on February 11, 2013 and diagnosed major depressive disorder, PTSD, personality disorder, and psychosocial stress.

and, following this, her supervisor yelled out at work that appellant was mentally ill.<sup>5</sup> Appellant asserted that she did not timely receive new employee orientation and reported ongoing problems, maintaining that she was targeted by a nurse and the supervisor, and that things were so hostile that she made two medication errors. She further indicated that the physician chief of mental health had promised to help her, but failed to do so. Appellant stated that she had filed an Equal Employment Opportunity Commission (EEOC) complaint listing 153 charges against the VA and was now working full duty.<sup>6</sup>

By decision dated January 15, 2015, an OWCP hearing representative found no compensable factors of employment and affirmed the June 12, 2014 decision.

### **LEGAL PRECEDENT**

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or stress-related disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her stress-related condition.<sup>7</sup> If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor.<sup>8</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.<sup>9</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>10</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.<sup>11</sup> When an employee experiences emotional stress in carrying out his or her employment duties, and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability

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<sup>5</sup> Appellant also discussed problems with her involuntary hospitalization at a private hospital, not relevant to the issue in this case.

<sup>6</sup> Subsequent to the hearing appellant submitted copious records including evidence previously of record and/or not relevant to this case. This included copies of e-mails, court documentation regarding her involuntary November 2013 hospitalization, VA police reports and FLRA claims regarding other employees, and medical reports.

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>9</sup> *Id.*

<sup>10</sup> 28 ECAB 125 (1976).

<sup>11</sup> *See Robert W. Johns*, 51 ECAB 137 (1999).

results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.<sup>12</sup> Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.<sup>13</sup> Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.<sup>14</sup> Personal perceptions alone are insufficient to establish an employment-related emotional condition.<sup>15</sup>

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.<sup>16</sup> Where the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.<sup>17</sup>

For harassment or discrimination to give rise to a compensable disability, there must be evidence introduced which establishes that the acts alleged or implicated by the employee did, in fact, occur. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations that the harassment occurred with probative and reliable evidence.<sup>18</sup> With regard to emotional claims arising under FECA, the term "harassment" as applied by the Board is not the equivalent of "harassment" as defined or implemented by other agencies, such as the EEOC, which is charged with statutory authority to investigate and evaluate such matters in the workplace. Rather, in evaluating claims for workers' compensation under FECA, the term "harassment" is synonymous, as generally defined, with a persistent disturbance, torment or persecution, *i.e.*, mistreatment by coemployees or coworkers. Mere perceptions and feelings of harassment will not support an award of compensation.<sup>19</sup>

### ANALYSIS

The Board finds that appellant has failed to establish an employment-related emotional condition in the performance of duty because she did not establish a compensable factor of employment.

Appellant has alleged as a factor of employment that she was generally "overwhelmed." The Board has held that overwork, when substantiated by sufficient factual information to

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<sup>12</sup> *Supra* note 10.

<sup>13</sup> *J.F.*, 59 ECAB 331 (2008).

<sup>14</sup> *M.D.*, 59 ECAB 211 (2007).

<sup>15</sup> *Roger Williams*, 52 ECAB 468 (2001).

<sup>16</sup> *Charles D. Edwards*, 55 ECAB 258 (2004).

<sup>17</sup> *Kim Nguyen*, 53 ECAB 127 (2001).

<sup>18</sup> *James E. Norris*, 52 ECAB 93 (2000).

<sup>19</sup> *Beverly R. Jones*, 55 ECAB 411 (2004).

corroborate the claimant's account of events, may be a compensable factor of employment.<sup>20</sup> In this case, however, the information provided by appellant is contradictory. On one hand, she stated that she was overwhelmed, yet she also stated that she had asked to work with additional veterans. Her supervisor indicated that appellant handled five veterans when the usual number for a team member was 12 to 15. As with all allegations, overwork must be established on a factual basis to be a compensable employment factor.<sup>21</sup> Appellant has not submitted any evidence corroborating this allegation nor has she otherwise attributed her condition to specific regular or specially assigned work duties under *Cutler*.<sup>22</sup> Therefore, she has not established a compensable factor of employment in this regard.

Appellant has also alleged that because she was not given appropriate policies or procedures, she disagreed with her work assignments, she was not given a chance to attend new employee orientation, and she had computer problems, her PTSD was aggravated and resulted in her November 2013 hospitalization. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of FECA.<sup>23</sup> The Board has long held that disputes regarding leave,<sup>24</sup> the inability to obtain a transfer,<sup>25</sup> the assignment of work,<sup>26</sup> the provision of training and equipment,<sup>27</sup> and the handling of a workers' compensation claim,<sup>28</sup> are administrative functions of the employing establishment and, absent error or abuse, are not compensable.<sup>29</sup> Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.<sup>30</sup>

Appellant's supervisor refuted appellant's allegation. She advised that appellant had 12 weeks of training, had been given her functional statement twice and noting that it was also available online, and that, when appellant was hired, there was a waiting list for new employee training. She stated that when appellant returned to work in January 2014 after her FMLA leave, she attended the new employee training. Although appellant complained that her printer broke, she provided appellant the proper procedure and a new printer was approved. Moreover, her supervisor indicated that appellant had another computer/printer available for her use. There is therefore no evidence of error or abuse in these administrative matters. Likewise, appellant provided no evidence of error or abuse with regard to any perceived problem with pay.

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<sup>20</sup> *Bobbie D. Daly*, 53 ECAB 691 (2002).

<sup>21</sup> *Sherry L. McFall*, 51 ECAB 436 (2000).

<sup>22</sup> *Supra* note 10.

<sup>23</sup> *Carolyn S. Philpott*, 51 ECAB 175 (1999).

<sup>24</sup> *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

<sup>25</sup> *Alberta Kinloch-Wright*, 48 ECAB 459 (1997).

<sup>26</sup> *Robert W. Johns*, 51 ECAB 137 (1999).

<sup>27</sup> *Brian H. Derrick*, 51 ECAB 417 (2000).

<sup>28</sup> *Bettina M. Graf*, 47 ECAB 687 (1996).

<sup>29</sup> *Supra* note 16.

<sup>30</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

As to appellant's assertions that her supervisor inappropriately yelled out in the presence of others that appellant was mentally ill, other than appellant's allegation, there is no corroborating evidence that this statement was in fact made. She also provided no corroboration that a supervisor called her in the field and was furious with her because she had gone to the union. Because appellant did not establish that these statements were in fact made, they do not constitute compensable factors of employment.<sup>31</sup>

Appellant also alleged that her supervisor treated her disrespectfully. Generally, complaints about the manner in which a supervisor performs his or her duties or the manner in which a supervisor exercises his or her discretion fall, as a rule, outside the scope of coverage provided by FECA. This principle recognizes that a supervisor or manager in general must be allowed to perform his or her duties and employees will, at times, dislike the actions taken. Mere disagreement or dislike of a supervisory or managerial action will not be compensable, absent evidence of error or abuse.<sup>32</sup> Here again, the record contains no evidence that her supervisor or any employing establishment supervisor or manager treated appellant in a disrespectful manner, there is no evidence of error or abuse in discharging management duties, and this allegation is not compensable.<sup>33</sup>

Regarding appellant's general contention that she was subjected to harassment at work, particularly by her supervisor and a nurse, the Board has held that mere perceptions of harassment or discrimination are not compensable under FECA,<sup>34</sup> and unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. A claimant must establish a factual basis for his or her allegations with probative and reliable evidence.<sup>35</sup> Although appellant indicated that she had filed an EEOC complaint, the record does not contain any documentation in support of such a complaint. She submitted nothing to show a persistent disturbance, torment or persecution, *i.e.*, mistreatment by employing establishment management.<sup>36</sup> Appellant therefore did not establish a factual basis for her claim of harassment by probative and reliable evidence.<sup>37</sup>

With regard to appellant's problems and allegations regarding a union representative and the union itself, the Board has adhered to the principle that union activities are personal in nature and are not considered to be within the course of employment.<sup>38</sup> While there is a recognized exception to the general rule, in that employees performing representational functions which entitle them to official time are in the performance of duty, this did not occur in this case as

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<sup>31</sup> *Ernest J. Malagrida*, 51 ECAB 287 (2000).

<sup>32</sup> *Id.*

<sup>33</sup> *See David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>34</sup> *Supra* note 18.

<sup>35</sup> *Id.*

<sup>36</sup> *Supra* note 19.

<sup>37</sup> *See Robert Breeden*, 57 ECAB 622 (2006).

<sup>38</sup> *Jimmy E. Norred*, 36 ECAB 726 (1985).

appellant was at union offices to seek representation on November 7, 2013 when she had a confrontation with the union representative.<sup>39</sup>

As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.<sup>40</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not establish an emotional condition in the performance of duty causally related to factors of her federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 15, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>39</sup> Compare *Shelly D. Duncan*, 54 ECAB 367 (2003).

<sup>40</sup> *Katherine A. Berg*, 54 ECAB 262 (2002).